IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

Bail Appl..No. 4273 of 2007()

CRIME NO. 36/05 OF KUNNAMANGALAM EXCISE RANGE

PETITIONER

MADHAVI, W/O.CHENNAN, AAYOTH,
CHATHAMANGALAM, KOZHIKODE TALUK.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS:

EXCISE INSPECTOR, KUNNAMANGALAM EXCISE
RANGE, KOZHIKODE DISTRICT.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4273 of 2007

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Dated this the 13th day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner, a woman, faces allegations under the Kerala Abkari Act. The petitioner was allegedly found to be in possession of 3 litres of arrack on 16.5.2005 when she was intercepted by the police. As there was no women police constables along with the party, she could not be arrested. The petitioner apprehends imminent arrest. According to the petitioner she is absolutely innocent. There was no seizure of any article from her possession. The learned counsel for the petitioner prays that directions under Section 438 Cr.P.C. may be issued in favour of the petitioner.

2. The learned Prosecutor opposes the application. He submits that her name appears in the seizure mahazar and occurrence report. There are no circumstances justifying the invocation of the discretion under Section 438 Cr.P.C., submits the learned Prosecutor.

3. I find merit in the opposition by the learned Prosecutor. Even regular bail can be granted to the petitioner only if the court is

in a position to entertain the twin satisfaction contemplated under Section 41A of the Kerala Abkari Act. I find no reason to invoke the extra ordinary equitable discretion in favour of the petitioner.

4. This application is accordingly dismissed. Needless to say, if the petitioner surrenders before the Investigating Officer or the learned Magistrate having jurisdiction and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously, on the date of surrender itself.

5. Hand over the order.

(R. BASANT)
Judge

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